

UNIVERSALIZATION OF THE CONVENTION ON THE PROHIBITION OF ANTIPERSONNEL MINES - ITS FOUNDATIONS, CURRENT STATUS AND THE FUTURE

Toma Galli, LL.B. *

UDK 358.232(094.2)
Izvorni znanstveni rad
Primljeno: studeni 2007.

The basic goal of this Article is to determine the legal grounds, describe the current situation and try to establish the future of universalization of the Mine Ban Convention. First we set out to briefly explain the concept of universalization of a treaty in general and describe possible basic methods of its implementation. This is followed by the analysis of the text of the Convention, the final reports of the annual meetings of states parties and, more specifically, the final report of the First Review Conference. In the section on the spread of the Ottawa Convention, we described its rapid entry into force and its unprecedented and far-reaching spread. In the closing section we present the methods available for further universalization of the Mine Ban Convention, attempting to foresee its future course.

Key words: Mine Ban Convention (Ottawa Convention) universalization; anti-personnel mines; international customary and treaty law; International Campaign to Ban Landmines(ICBL); non-state actors

I. INTRODUCTION

The basic goal of this paper is to determine the legal grounds, describe the current situation and try to establish the future of the universalization of the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer or Anti-Personnel Mines and on Their Destruction (the Ottawa Convention). To this end, we shall primarily try to briefly explain the concept of

* Toma Galli, LL. B., Permanent Mission of the Republic of Croatia to the United Nations Office in Geneva, 25, route de Ferney, 1209 Geneva

the universalization of a treaty in general and describe possible basic methods for its implementation. In this we shall cast a look on the relation between international treaty law and international customary law, bearing specifically in mind the different possibilities for the universalization of the Ottawa Convention, as well as individual statements from the final reports of the meetings of states parties which, in our view, address this issue to a certain extent.

This will be followed by a brief presentation of how the idea of a comprehensive and total ban on anti-personnel mines started and its development from the beginning of the 1990s until the adoption of the Ottawa Convention. After the analysis of the text of the Convention, the final reports of the annual meetings of states parties and, specifically, the final report of the First Review Conference, we shall attempt to determine the legal grounds and the full meaning of the concept of universalization of the Ottawa Convention. Finally, in the section titled on the spread of the Ottawa Convention in time and space, we shall show the rapid entry of the Convention into force and its spreading quickly and far-reachingly, almost without precedent in the history of treaties.

In the closing chapters we intend to present the methods available to states parties, the relevant organizations, and NGOs, for further universalization of this extremely interesting and in many ways special treaty, attempting to foresee the future course of the process on the basis of the actions taken by states parties and the response of states not parties.

II. CONCEPT OF UNIVERSALIZATION

The Convention on the Prohibition of the Use, Stockpiling, Production and Transfer or Anti-Personnel Mines and on Their Destruction, often referred to as the Mine Ban Convention or Treaty, is the most comprehensive international instrument dealing with anti-personnel landmines. By adopting a rather short (only 22 articles), but, in many ways remarkably progressive text, the States parties to the Convention agreed that never, under any circumstances, will they use, develop, produce, acquire, stockpile, retain or transfer anti-personnel mines. At the same time, they also agreed that they would never, under any circumstances, assist, encourage or induce anyone to engage in any activity prohibited to a State party by the Convention¹. Furthermore, States parties

¹ Convention on the Prohibition of the Use, Stockpiling, Production and Transfer or Anti-Personnel Mines and on Their Destruction, Article 1.

decided to destroy all anti-personnel mines in their stockpiles within four years after the entry into force of the Convention for a specific State party, except for those anti-personnel mines retained for the development of and training in mine detection or mine clearance.² Equally so, the States parties decided to destroy or ensure the destruction of all anti-personnel mines in mined areas under their jurisdiction or control not later than ten years after entry into force of the Convention for a specific State party.³ In addition, although not immediately clear from the title of the Convention, but immediately emerging in the mind of anyone that has been in any manner possible involved with the Convention, is the Convention's provision regarding the assistance that States parties which are in a position to do so, should provide for the care, rehabilitation and socio-economic reintegration of the victims of anti-personnel mines.⁴ This represents a great *novum* in the history of international treaty law regulating disarmament and arms control since this is the first time that a treaty obligates the State parties to provide assistance to the very people that have fallen victim to the weapons prohibited by said treaty.⁵

Let us now, after this short introduction on the Convention, turn to the main subject of our paper - universalization of the Mine Ban Treaty.

An integral part of any agreement under international law is the natural desire of its parties for the broadest possible application of the provisions of the respective agreement, that is - its universalization. This self-evident claim to universalization follows from the very logic of international law: like any law, it tends towards its possibly widest application. This tendency and logic may be explicitly expressed in the treaty itself, usually in its preamble, or they may not be mentioned at all, but nonetheless present.

The reach of the implementation of a particular treaty (and by this we mean treaties open to accession by all the states of the world) is secured by the biggest possible number of states which in an appropriate manner, prescribed by the treaty, internationally express their readiness to be bound by its provisions, thus becoming parties to it.

In addition to this formal treaty bind, there is a possibility for individual states, even though they are not parties to the particular treaty, to still imple-

² Ibid., Article 4.

³ Ibid., Article 5.

⁴ Ibid., Article 6.

⁵ More information on the Mine Ban Convention and its history see below under Section "Brief history of the idea of a total and comprehensive ban on anti-personnel mines".

ment its provisions, contributing beyond doubt to its universalization. For instance, individual states may simply declare that they will honor, or they may simply begin to de-facto honor, all or some of the treaty provisions even without formally acceding to the treaty. States may be caused to act in such a way by various practical and political reasons we shall not go into here.

Another situation in which states are compelled to honor the provisions of a particular treaty even without being a party to the same, thus confirming its universality, is when a treaty is transposed from international treaty law to international customary law. Although such a case is an exception in the body of international law and usually requires a passage of a longer period, it is by no means unthinkable.

It is useful to mention here the famous dispute submitted to the International Court of Justice in 1967, related to the delimitation of the continental shelf between the Federal Republic of Germany on the one side and Denmark and the Netherlands on the other, better known as the *North Sea Continental Shelf Cases*. These cases prompted the Court to express very clearly and with far-reaching consequences its views on the issue of creation and validity of international customary law. In its judgment, rejecting the contention of Denmark and the Netherlands that the certain rule has become customary law, the Court, while enumerating the conditions which should be fulfilled for the formation of the rule of customary law, established that “not only must the acts concerned amount to a settled practice, but they must also be such, or be carried out in such a way, as to be evidenced of a belief that this practice is rendered obligatory by the existence of a rule of law requiring it”.⁶

However, the relation between international treaty law and international customary law goes far beyond the limits of this paper, but we mention it in connection with the Ottawa Convention for two reasons. Firstly, in order to avoid a possible exchange of the “international or international humanitarian norm established by the Convention”, as noted in the final reports of the meeting of the states parties to the Ottawa Convention, for the norm of international customary law. Notably, it is quite certain that in regard to the Ottawa Convention there is (still) no international customary law which in this case would be binding on all the states of the world. Although it is beyond doubt that the entire international community, by adopting the Convention, witnessed the establishment of a new “humanitarian norm”, the relation of

⁶ North Sea Continental Shelf Cases, I.C.J. Rep. 1969.

states not parties to the Convention does not meet two basic requirements for the Convention norm to be transposed to customary law as remarked above: states not parties do not systematically fulfill the obligations prescribed in the Convention nor is there in these states legal awareness of the need to implement its norms derived from international law. However, and this is the second reason why we included this relationship between international treaty and customary law into this paper, in reviewing possible ways to universalize the Convention, we did not want to leave out any possible, or in the foreseeable future rather probable, ways to spread this Convention.⁷

Perhaps it is interesting in the context of the universalization of the Convention to note the provision of its Art. 17 which explicitly prohibits expressing reservations to any provision of the Convention. This should by all means be considered a clear contribution of the creators of the Convention to its universal implementation, because this way it is *a priori* made impossible for states parties to limit or modify by unilateral declarations the obligations contained in the Convention in order to restrict the Convention in its content or spatial reach.

We shall conclude our addressing the general concept of universalization by noting that, today, when states have long ceased to be the only competent factors of international law and international relations, an important contribution to the broad implementation of the provisions of individual treaties is also made by the relation of the so-called *non-state actors* to such treaties. Considering the growing significance of this topic in the Ottawa Convention, we shall be coming back to it later in this paper.

III. BRIEF HISTORY OF THE IDEA OF A TOTAL AND COMPREHENSIVE BAN ON ANTI-PERSONNEL MINES

Basically, the idea of a ban on anti-personnel mines, as formulated in the Ottawa Convention, has from the very beginning included the idea of a total and comprehensive prohibition of this weapon. It is a big step forward compared with the previous state of international treaty law under which the use of such mines was regulated in some detail and restricted in many ways, but

⁷ Juraj Andrassy, Božidar Bakotić, Budisav Vukas, International Law, I. dio, Školska knjiga, Zagreb, 1995.

not totally banned. In order to achieve the goal of total prohibition of anti-personnel mines it was, therefore, necessary to adopt appropriate new rules and ensure that all the countries of the world, in one way or another, accept adherence to the Convention. It was equally important that non-state actors, now almost the only users of anti-personnel mines, should waive their use, stockpiling, manufacturing, or transfer of this weapon. Today, we may say without exaggeration that states parties, relevant international organizations and NGOs involved have gone a long way on their path to the goal mentioned. Let us briefly summarize the history of the idea.

Anti-personnel mines were first massively used in World War Two. However, the conflict itself was the one of such epic proportions, fought with horrific weapons and with so many casualties, that anti-humanitarian effects of anti-personnel mines were simply overlooked. However, further unlimited use of anti-personnel mines in the Korean and Vietnam wars, and subsequently in the first Gulf War, shockingly revealed the extremely inhumane and indiscriminate effects of this weapon. Such a situation provoked a coordinated action by a number of respectful NGOs, primarily the Human Rights Watch, the Handicap International, the Physicians for Human Rights and the Vietnam Veterans for America Foundation, which led to the creation of the renowned coordination of NGOs called International Campaign for the Ban on Land Mines⁸. From very early on in the history of the ICBL, NGOs uncompromisingly stepped in for a total ban on anti-personnel mines. At that time, an ever growing number of prominent individuals, including the UN Secretary General and presidents of the most influential states of the world, like U.S. President Clinton, and religious leaders, e.g. Pope John Paul II, were joining the call for a total ban on this weapon. Nevertheless, the official fora that should have logically led the discussion on this issue (primarily, the Conventional Weapons Convention, and the Conference on Disarmament) remained silent, incapable of reaching a

⁸ The International Campaign to Ban Landmines, better known under the acronym ICBL, was established in 1991 as a flexible network of non-governmental organizations with a basic common goal: a complete ban of anti-personnel mines. Besides the aforementioned goal, the member organizations of the ICBL, continue to work persistently towards the implementation of the other goals established by the Convention, especially that of demining the territories under jurisdiction or control of the States Parties, as well as rehabilitation and reintegration of landmine survivors. The ICBL (which today numbers more than 1,400 NGOs from 90 countries), and its coordinator Jody Williams were awarded in 1997 the Nobel Peace Prize.

consensus on starting meaningful negotiations. This institutional crisis forced NGOs to press for a strong coordinated action which would soon lead to high awareness of danger from anti-personnel mines throughout the world, followed by the creation of an increasing number of new associations whose basic purpose was to promote the idea of the ban on anti-personnel mines. They would encourage several states, particularly Belgium, Norway, Switzerland, Canada, Holland, Italy and some others to take unilateral measures directed, first at declaring a moratorium on the manufacture, transfer, stockpiling and using anti-personnel mines, as well as specific action focused on destroying stockpiled anti-personnel mines, but also to ban anti-personnel mines altogether. Similarly, the massive pressure of the public and the awakened awareness of states of the need for an appropriate solution to this issue under international law led to the Ottawa Conference in 1996, attended by about fifty states, hundreds of NGOs and tens of UN agencies. The participants adopted a declaration on the soonest possible conclusion of a treaty to ban anti-personnel mines, followed by an ambitious plan to carry it out by December 1997. This is how the so-called Ottawa process was launched, finally giving the issue of anti-personnel mines its full international legitimacy. The process continued with the first preparatory meeting in Vienna, where states discussed elements of the treaty for the first time, and the second preparatory meeting in Brussels, where states confirmed their readiness to agree on and sign the treaty. What followed is common knowledge: in September 1997, 121 states agreed and adopted the Convention on Prohibition of Anti-Personnel Mines in Oslo, and a few months later, on 4 December 1997, the Convention was open for signature in Ottawa, which is how it got its colloquial name - the Ottawa Convention. On the occasion, the Convention was signed by 122 states.

This action of NGOs, with unprecedented results in the modern history of international law, some authors like to call “democratization of international law”, “international law from below” or “unconventional diplomacy”⁹. In any case, whether we attach the significance of a new force driving international law to the noticeable peculiarities in bringing about the Ottawa Convention or not, it is impossible to overlook the huge contribution of NGOs and particular

⁹ See, for example, N. Short, *The Role of NGOs in the Ottawa Process to Ban the Landmines*, Martinus Nijhoff Publishers, London, 1999. ili Julian Davis, *The ICBL: Public Diplomacy, Middle Power Leadership and an Unconventional Negotiating Process*, *The Journal of Humanitarian Assistance*, 2004.

international organizations working tirelessly to create and have this Convention adopted. Finally, the special character of this case is underlined by, in many ways, the exceptional position enjoyed by NGOs and some international organizations in the functioning and everyday implementation of the Ottawa Convention, formally introduced into the Convention itself.

IV. ATTEMPT AT DEFINITION, AND LEGAL GROUNDS FOR THE UNIVERSALIZATION OF THE OTTAWA CONVENTION

As we already pointed out, in a number of treaties it is possible to find explicit calls for their comprehensive implementation. By the same token, in the preamble to the Ottawa Convention, among the assumptions under which states parties conclude the treaty, there is also a call to the universalization of the Convention expressed in the following manner: “Emphasizing the desirability of attracting the adherence of all States to this Convention, and determined to work strenuously towards the promotion of its universalization in all relevant fora, including, *inter alia*, the United Nations, the Conference on Disarmament, regional organizations, and groupings, and review conferences of the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects.”¹⁰ Though we shall try to explain the meaning of the quote in more detail in the section on the possible ways and applicable methods of further universalization of the Ottawa Convention, we may already point out that the states parties have taken this task very seriously and together with numerous NGOs and international organizations active in this field have undertaken adequate measures with a view to promoting the goals of the Convention as well as its comprehensive implementation.

For further research into the universalization of the Ottawa Convention and its fullest possible definition, it seems the most appropriate to use the designation states parties came up with to define this concept. The universalization of the Ottawa Convention, as well as the Convention in its own right, may be seen as a permanent process managed by states parties *i.e.* by their formal and informal decisions first adopted at the meetings of states parties,

¹⁰ Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personel Mines and on Their Destruction, NN-MU, no. 7/1998.

and subsequently through other mechanisms, which were gradually introduced with a view to more efficient functioning of the Convention. The concept of the universalization of the Convention, developing gradually through the final reports of the meetings of states parties and through informal discussions on this important issue, was thus assuming a more and more recognizable form. Universalization reached its full physiognomy in the Final Report of the First Review Conference in Kenya in 2004.¹¹ In the section dealing with the Overview of the Implementation and Status of the Convention there was a thorough analysis of all the key goals of the Convention, while the Action Plan, in its seventy points, set up clear objectives and the way to achieve them in the period until the next review conference. Accordingly, the Implementation Review included a comprehensive synthesis of the concept of universalization, as developed gradually by states parties at their meetings, and further development of their individual elements, whereas the Action Plan addressed the way and direction for the future action in this regard.

Let us first see how states parties determined the concept of universalization of the Ottawa Convention in this most important document in its short, but rather intensive history:

1. Primarily, universalization includes the effort to have states outside the Convention accede to it as soon as possible;
2. Universalization also includes the effort to have the states that signed the Convention ratify it as soon as possible;
3. It also includes, as a sort of an avant-garde outlook, the effort to have non-state actors observe the norms of the Convention; and finally and originally,
4. Universalization includes the recognition of the importance of public awareness of the sense and significance of the Convention and the encouragement to its strengthening with a view to achieving its goals, one of which is, of course, its implementation.

Let us go on to see what tasks states parties have set up for themselves until the next review conference in 2009:

1. Further universalization of the Convention through appropriate argumentation, primarily by emphasizing the very limited military efficiency of anti-personnel mines against their horrifying effects in humanitarian terms.

¹¹ Final Report, APLC/CONF/2004/5.

In this, special attention is focused on the states which still continue to use, manufacture or possess huge stockpiles of anti-personnel mines, that is, on the regions where the number of states parties to the Convention is extremely low;

2. Promotion of the goals of the Convention in bilateral talks, peace processes, national parliaments and the media;
3. Promotion of the goals of the Convention in all the relevant multilateral fora;
4. Cooperation of all the relevant factors in the universalization of the Convention, particularly the UN and its Secretary General, ICRC, ICBL, other NGOs, parliamentarians and concerned citizens;
5. Acceptance of the norms of the Convention by non-state actors.

The path to this comprehensive concept of the universalization of the Convention was gradual. It is our intention to give a brief sketch of the development of the concept of universalization in the final reports of states parties, as well as its upgrade through informal convention mechanisms, particularly the activity of the Contact Group for the Universalization of the Convention.

At the first meeting of states parties in Maputo in 1999, the concept of universalization was mainly determined in its traditional meaning, as in most treaties. This normally boils down to a general call on all the governments and people everywhere to join the states parties in their efforts, and a call on states not parties to accede to the Convention, on the signatories to ratify it, and on the states which for whatever reason are not able to accede to it, to provisionally implement its provisions. In the final report of this meeting¹² there is, however, a note of states parties concerning the establishment of a new international standard and norm of behavior with the entry into force of the Convention. Initially, we have tried to determine the relation between international treaty law and international customary law, *inter alia*, to fully determine the meaning of this claim which, with some additions, continued to appear in the final reports of the meetings of states parties. We shall be returning to this important issue in further discussing particular parts of final reports. Although this is not mentioned in the final reports of the First Meeting of states parties, at the initiative of the International Campaign to Ban Landmines, Canada set up a special Contact Group for the universalization of the Convention. The basic goal of the Contact Group was, and today still is, to encourage states

¹² Final Report/APLC/ MSP.1/1999/1.

to accede to the Convention. Similarly, the Group expressed its readiness to render assistance, in particular cases when necessary and requested by the party in question, in the ratification or accession procedures. The activities of the Group and participation in its work are open to all the states particularly interested in further spreading the Convention.

At the second meeting in Geneva in 2000, states parties underlined the need to continue to work on the universalization of the Convention, and they commended the work of a number of states, various international organizations and NGOs in this context. On this occasion states parties noted for the first time the importance of observing the provisions of the Convention by states parties themselves, attaching particular importance not only to the form but also to the content of the concept of universalization as well.¹³ Notably, the ultimate purpose of all the efforts directed at the universalization of the Convention is, actually, full and effective implementation of all its provisions.

At the third meeting of states parties in Managua in 2001, the activities of the Universalization Contact Group were welcomed for the first time. Regional seminars in the areas with an extremely low number of states parties was supported. A recommendation to states parties was issued, whose importance will additionally grow in time, and it was repeated in the Presidential Action Plan¹⁴, urging states parties to particularly focus on the regions with the smallest number of states parties. This focus on such regions - it being clear they included the Middle East, Asia and the Community of Independent States of the former Soviet Union - reveals, three years into the implementation of the Convention, that it was already pretty much clear in which areas the Convention would require additional support. The initial enthusiasm in spreading the Convention that needed no particular nudging, although such an action started at the very beginning of the Convention, would be followed by the years in which spreading the Convention would greatly depend on the appropriate efforts of states parties. We shall be saying more about the speed and direction in which the Convention spread throughout the world, as well as about the regions where it was not accepted, in the section on "Speed and spatial reach of the spread of the Ottawa Convention." In the Declaration from Managua¹⁵ there is a reiteration of the establishment of a new international norm ("we recognize that the new

¹³ Final Report/APLC/ MSP.2/2000/1.

¹⁴ Final Report/APLC/MSP.3/2001/1.

¹⁵ APLC/MSP.3/2001/1.

international norm established by the Convention is being demonstrated by the successful record of the implementation of the Convention, including the conduct of many States not party to the Convention respecting the provisions therein.”), introducing an important addition: the existence of this norm has been confirmed by the actions of many states not parties. Apparently, by special emphasis on *de facto* observation of the provisions of the Convention by states not parties, states parties tried to discreetly draw attention to the actions gradually leading to the fulfillment of the requirements necessary for the growth of the norm of international treaty law into the norm of customary international law, or at least to express their desire for such a development. However, this sentence, not even reinforced by the mentioned addition, cannot in any way be interpreted as a creation of a new customary law norm, but only as satisfaction expressed by states parties with the extremely successful implementation of the Convention and its quick universalization through both accession to the Convention and tacit acceptance of its provisions.

At the fourth meeting of states parties in Geneva in 2002,¹⁶ states parties mainly repeated their earlier, now already well-known, views and calls for the universalization of the Convention. What is special, however, about this meeting, and a characteristic that is becoming a distinctive feature of the Convention, is the call of states parties to non-states actors to commit to the waiver of the use of anti-personnel mines, in accordance with the norm set up by the Convention, with a view, as they said, to considerably speeding up the progress towards a mine-free world. This substantial extension of the traditional interpretation of the concept of universalization, taking it outside the circle of the usual actors, has been brought about by the increasing clarity of the view of states parties that contemporary users of anti-personnel mines are, in fact, non-state actors, and not governments. The activities of relevant international organizations and a number of NGOs, particularly the Geneva Call¹⁷, were

¹⁶ Final Report, APLC/MSP.4/2002/1.

¹⁷ Geneva Call is an international humanitarian organization whose stated goal is to engage military non-state actors to adherence to the norms of the international humanitarian law, beginning with the Mine Ban Convention. For that purpose, Geneva Call introduced a new document, deposited with the Government of the Canton of Geneva, called “Deed of Commitment for Adherence to Total Ban of Anti-Personnel Mines and for Cooperation in Mine Action”. This is an interesting and innovative way to oblige non-state actors to respect the Convention’s norms, to which they cannot accede, since only states can be parties to the Convention.

focused on raising the awareness of this extremely important fact, and was first recorded in the final report of a meeting of states parties. It could be said that this extension of the Ottawa Convention to non-state actors opened a new chapter in its universalization, as well as an important chapter in the history of international law. At the fourth meeting states parties also noted that the universalization of the Convention was prerequisite to the fulfillment of all its humanitarian goals. It is absolutely clear that only a universal implementation of the ban on anti-personnel mines may lead to the ultimate humanitarian goal of the Convention: a world in which there will be no new victims of anti-personnel mines. At this meeting, states for the first time introduced universalization among the core aims of the Convention, along with the protection of mine victims, mine clearance and destruction of stockpiles. This meeting again welcomed the efforts of the Contact Group towards the universalization of the Convention, particularly the establishment of the dialogue with military representatives with a view to disseminating knowledge about the Convention among military personnel, which - as noted - can play an important role in the decision of a particular state to accede to the Convention. Simultaneously, the meeting welcomed the efforts of the Group to put the universalization of the Convention on the agenda of individual regional organizations, particularly in low-response regions, as well as the effort to categorize states not parties by the reasons preventing them from accession. The report of the Standing Committee on General Status and Implementation of the Convention¹⁸ for the first time underlined the importance of consolidation of the international norm set up by the Convention and welcomed significant developments in this connection. Important novelties were also introduced in the President's Action Programme, which emphasized the need to include in the Convention, as soon as possible, the biggest manufacturers, owners and users of anti-personnel mines. This particularly underscored the belief of states parties that the ostensible military benefits of anti-personnel mines, proved wrong on several occasions, can in no way outweigh the devastating humanitarian consequences of this weapon, or justify it. It is precisely this argument that states parties are determined to use in their talks with those who are still not sure whether it is justified for them to accede to the Ottawa Convention.

At the fourth meeting, states parties introduced another important novelty in the language concerning the universalization of the Convention: the con-

¹⁸ APLC/MSP.4/2002/SC.4/1/Rev.1.

cept of the “role of public conscience”. States parties noted that the efforts of ICBL, ICRC and others throughout the world were evidence of the important role of public conscience in resolving the problems of anti-personnel mines, particularly in maintaining the interest within states and, consequently, the appropriate international settlement of the problem. It is undisputable that it was this incentive focused on maintaining the interest in achieving the goals of the Convention that was prerequisite to its further spread. In this context there was a special emphasis on the exceptional cooperation and partnership among states parties and NGOs, ICBL, ICRC, UN, regional organizations and others in achieving the goals of the Convention.

I would also like to mention that in the final report of the meeting a number of states parties from Latin America added their call from Managua¹⁹ expressing their desire to establish a zone free of anti-personnel mines in the western hemisphere. Similarly, partner states and observers of the *Human Security Network* enclosed with the final report their declaration on the promotion of the universalization of the Convention, in which they particularly commend efforts of individual states in this regard.

At the fifth meeting in Bangkok, states parties reiterated most of the above-mentioned views on the universalization of the Convention and particularly underlined that it was the first gathering of states parties in Asia, which was a significant step in the direction of spreading the Convention in that region. They also called on the signatories to the Convention to honor their commitments and not to act in contravention of the goal and purpose of this treaty. They particularly emphasized the benefits which mine-infested developing states could enjoy if they accede to the Convention, particularly stressing assistance to the victims and support in mine clearance. States parties thereby once again reaffirmed their often repeated belief that anti-mine assistance needs to primarily focus on states parties to the Convention. Interestingly, the final report of the meeting calls on non-state actors to cease to use anti-personnel mines in accordance with the principles and norms of international humanitarian law. We must confess that in our opinion, international humanitarian law, while bringing a number of rules on the methods and means of warfare to be adhered to by the parties to a conflict, does not prohibit the use of anti-personnel mines either by states or by non-state actors. In this connection we hold it more appropriate to indicate in this report to the new rules set up by

¹⁹ APLC/MSP.4/2002/1.

the Convention and call on non-state actors to respect them, as had been done in the final report of the preceding meeting of states parties. In the final report of this meeting²⁰ particular attention was paid to the cooperation between governments, international organizations and NGOs, focused on strengthening their strategic partnership with the media and the private sector with a view to forming public opinion to further universalize the Convention. Welcome partners in achieving this goal are particularly parliamentarians, the Human Security Network, certain multilateral fora such as Non-aligned movement, interparliamentarian unions and other regional organizations. The explicit mention of the non-aligned countries movement in this document clearly indicates the attempt of states parties to use the most influential fora in the part of the world where the implementation of the Convention lags behind.

It is also noteworthy that numerous states have from the very beginning of the Ottawa process paid great attention precisely to the media. Thus, presidents of the meetings of states parties usually gave a press conference before, during and after the meetings of states parties and extensively reported to the media about their work between the meetings of states parties, in Geneva and in other important centers, as well as in the cities where the meetings took place. In such conferences, they were joined by representatives of civil society, led by the ICBL, or ICBL organized its own press conferences. States parties, nudged by civil society, very soon realized that it was through the efforts to raise the awareness of the world at large and of each individual via the media, concerning the existence and the contents of the Ottawa Convention, that the consistent implementation of the Convention greatly depended. States parties, owing also to tiresome media action primarily of ICBL and ICRC, as well as of other relevant organizations, really came closer to the ultimate goal of this undertaking. In regard to the work of the Universalization Contact Group, states parties stressed the special role of partners in the joint action towards universalization, explicitly mentioning parliamentarians, ICBL, ICRC, particular international organizations, the Non-aligned Movement and particular regional organizations. Lastly, the final report from Bangkok was also added the Lima Declaration²¹ in which experts from American states parties reiterate the "importance of adhering to the principles and fulfilling the obligations established by international law with regard to the action against anti-personnel

²⁰ Final Report, APLC/MSP.5/2003/5.

²¹ APLC/MSP.5/2003/5.

mines, which are in force for all the nations.” In this regard, we have to stress once again, that in our opinion neither the rules of international customary law nor the specific rules of international humanitarian law prohibit the use of anti-personnel mines. These rules do contain principles according to which it is not permitted to use a weapon with indiscriminate and extremely inhuman effects. They also introduce the necessary distinction between military and civilian targets in military operations, and provide that the injury inflicted should be in proportion with the aims of the military operation. However, the elaboration of these principles is not always simple and frequently leads to different interpretations by states. In that regard it is impossible to find a common position of the states on the issue of anti-personnel mines, especially not the agreement on the ban on their use. Had there been an agreement on the impermissibility of anti-personnel mines for the above-mentioned reasons, the Ottawa Convention would have been redundant, as well as the treaties preceding it in this regard. The most that can be claimed to be contained in international customary law concerning mines, both anti-vehicle and anti-personnel, and their use in international or internal conflicts, is that, as a general principle, in using them particular attention is to be paid to reducing to the minimum their indiscriminate effects.²² Regrettably, it has to be admitted that the practice of some states (use, manufacture, stockpiling and transfer of anti-personnel mines), on the one hand, and the lack of clear understanding on the meaning and application of the adequate principles of international humanitarian law, on the other hand, precludes the creation of international customary law in this regard.

The sixth meeting of states parties in Zagreb was special in many ways. The basic task of states parties at this meeting was to support the implementation of the Action Plan from Nairobi through the assessment of the progress in the implementation of its guidelines, and to determine the course of action for the next year. In this context the final report from Zagreb, the so-called Zagreb Progress Report²³, is actually a detailed overview of the activities established by the Action Plan and undertaken within each of the areas of implementation of the Convention, including its universalization. In addition, states parties set up their priorities for the implementation of the Action Plan for the next year.

²² Jean Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law*, Volume I: Rules, Cambridge, 2005.

²³ APLC/MSP:6/2005/5.

Thus in regard to the universalization of the Convention states parties decided to focus their activities on the states which announced they might ratify the Convention or accede to it in the near future, and on the states which use, manufacture or massively stockpile this type of weapon. Finally, states parties have expressed their determination to promote the general implementation of the provisions of the Convention by undertaking appropriate measures for the termination of the use, manufacture, stockpiling and transfer of anti-personnel mines by non-state actors.

At the seventh meeting of states parties²⁴ in Geneva, the task of states parties was identical to the one in Zagreb: to evaluate the implementation of the Action Plan from Nairobi and to determine the priorities for the next year. States parties did just that, bringing among other things, a detailed overview of the state of the universalization of the Convention and the measures undertaken. We shall be saying more about the status established and the future measures in the chapter on the "Methods and the Future of the Ottawa Convention".

V. SPEED AND SPATIAL REACH OF THE SPREAD OF THE OTTAWA CONVENTION

In this chapter we shall try to present the really impressive manner in which the Ottawa Convention entered the international scene and immediately began to spread throughout the world.

The attention of the final reports and presidential declarations we have discussed will now be drawn to facts from the field. In their final reports states parties wanted, in a way, to create the reality. Final reports of states parties, however, often depended on - and, indeed, reflected - the implementation of the Ottawa Convention in the field. This healthy focus of states parties on hard facts, not only on the proclaimed ideals, is another extremely important contribution of NGOs to the Ottawa Process. Particularly in this context it is necessary to mention the huge - both in importance and volume - edition

²⁴ The Final document from this meeting has not been issued yet, but an informal version can be found at the web site of the GICHD. All previously mentioned documents adopted at the meetings of the states parties can also be obtained at this web site. The address is www.gichd.ch.

of the ICBL: Landmine Monitor²⁵, through which civil society confirms its commitment to the implementation of the goals of the Ottawa Convention and their supervision. In this manual with more than 1,200 pages there is a detailed overview of the implementation of the Convention in the last year, by individual key areas and by individual states parties, simultaneously noting the progress achieved, without unnecessary circumlocution, and identifying the remaining problems. Consequently, in this introduction to the description of the “explosion” of the Convention in terms of time and spatial reach, we can but join the newest issue of Landmine Monitor²⁶ in concluding that the only real measure of the success of the Convention is its palpable effect on the extremely grave problem caused by anti-personnel mines.

Soon after the signature of the Convention in Ottawa²⁷, the Secretary General of the United Nations began receiving numerous documents of ratification, acceptance or approval of the Convention. About fifteen months after the signature of the Convention, on 1 March 1999, the requirement referred to in its Article 17 was met and the Convention came into force “on the first day of the sixth month following the month in which the fortieth document of its ratification, acceptance or approval has been deposited.” This rather common phrase related to the entry into force of treaties is only mentioned to point to the fact that the first forty documents of ratification, acceptance or approval of the Convention were collected in about nine months, that is between December 1997 and September 1998! When we compare this with the usual period of time that passes between the signature of a treaty and its entry into force - bearing in mind that a number of treaties actually required much less ratifications for them to enter into force than is the case with the Ottawa Convention, this result is truly amazing. Besides, in less than two years after being open for signature, almost half the states of the world became parties to the Convention! It could almost be said that in regard to the speed with which

²⁵ The eighth, and last Landmine Monitor Report, was presented to the public in mid September 2006, simultaneously in thirty-odd towns and cities, with requisite media coverage. This annual presentation of the ICBL, also represents an important contribution to the broader media presentation of the Mine Ban Convention and the problem of anti-personnel mines discussed in this Article.

²⁶ Landmine Monitor, July 2006. In this part of the article we will draw heavily from upon the data presented in this year's edition of the Landmine Monitor.

²⁷ Between December 3, 1997, when the Convention was opened for signature and its entry into force on March 1, 1999, 133 states signed on to the Mine Ban Convention.

the Convention entered into force, at least compared with major treaties in this area, this was without precedent.

As regards the geographic distribution of the interest of states in the Convention, among the states which - with their appropriate actions - enabled the Convention to enter into force there were about twenty European states, among others France, the United Kingdom, Germany, Austria, and Croatia. In addition, about a dozen African, a dozen American-Caribbean, and some Pacific states deposited their appropriate ratification instruments before the Convention entered into force. Regrettably, the states of Asia and the Middle East did not show any interest whatsoever in the Convention from its very beginning. The only exception in the Middle East was Yemen. The trend noted before the Convention entered into force was to a great extent continued after the Convention entered into force. Thus, in 1999 for example, the Convention was acceded to by ten European states, ten Latin-American states and six African states. That year, the Convention was also acceded to by Australia and New Zealand. The response in Asia, where the Convention, in 1999, was acceded to by Malaysia, Tajikistan and Cambodia, and in the Middle East where not a single state acceded to the Convention, remained extremely weak. In 2000, the process of mass accession to the Convention continued, particularly in Africa where the Convention was acceded to by another dozen states. In Europe the universalization continued by the accession of Albania, Romania and Moldavia. The acceptance of the Convention in the Americas and in the Caribbean and Pacific areas, excluding some of the smallest states in this region for which the procedural issues related to the accession were too great an administrative burden, was almost absolute. The next two years, 2001 and 2002, marked the completion of the process of universalization in Africa, with another fifteen countries acceding to the Convention. Thus, almost all the African states accepted the Convention. Today, in addition to Somalia which under the circumstances of a transitional government, nevertheless, announced its accession to the Convention in the nearest future, the only African countries which are not parties to the Convention are Morocco, Libya and Egypt. A year later, in 2003, the Convention was acceded to by another five European states, among which, simultaneously and on the basis of mutual agreement, were Greece and Turkey, which is considered an exceptional success in the universalization of the Convention and a direct consequence of tireless activity of states parties and the relevant organizations and NGOs. This way the process of the universalization of the Convention was completed in Southeast Europe, and the Convention

included almost entire Europe. That year, the Convention was acceded to by Cyprus, in a way the one and only state of the Middle East that has done so. From 2003 to 2006, each year the Convention was acceded to by one Asian state in the following order: East Timor, Bhutan and Brunei Darussalam. The number of states parties thus rose to about ten, which is still a very modest result, bearing in mind the scale of the problem caused by anti-personnel mines in that part of the world, and the fact that the states mentioned, except for a few, do not include the most important states of the continent.

After the sweeping start of the Convention, there necessarily followed slowing down of the trend caused by the reduction in the number of states remaining outside the Convention, as well as by real or fictitious problems which some states used as a pretext for not acceding to the Convention. Thus, for example, a number of states explain their non-accession by an important position the weapon at issue occupies in their national military strategy (USA, South Korea, Cuba etc.), or by special defense arrangements with states not parties (Palau). Other states claimed that their accession was postponed until the final resolution of their ongoing territorial, regional or internal disputes (Armenia and Azerbaijan). Still other states claimed that they were prevented from the accession to the Convention by the use of anti-personnel mines by non-state actors in their territory. Some cannot accede to the Convention simply because the procedure involved requires administrative activity which under the circumstances of reduced capacities and scarce resources cannot count as priority (some of the smallest Pacific states, e.g. Tuvalu and Tonga), and some simply cannot accede to the Convention because of the lasting political uncertainty and absence of stable government (Somalia).

Particular attention of states parties to the Convention is drawn to the states which signed the Convention but have still not ratified it - Poland, Indonesia and the Marshall Islands. However, Indonesia and Poland announced their readiness to ratify the Convention soon and initiated their respective national procedures to this end, whereas the Marshall Islands voted last year, for the first time, in favor of the resolution of the UN General Assembly calling for the universalization and full implementation of the Ottawa Convention, after having regularly abstained from voting in the preceding years.

Consequently, the states parties of today include almost entire Europe, with the exclusion of Finland and Poland, the entire western hemisphere, that is all the American states, with the exclusion of Cuba and the USA, and all the African states, except the four above-mentioned states. Outside the Convention there

still remain most states of Asia, the Middle East, and CIS countries, totaling about 20% of the states of the world, or 44 to be exact.

Finally, let us briefly mention here the interesting case which emerged from the dissolution of the state of Serbia and Montenegro. After the referendum on independence was held on 21 May this year, and Montenegro proclaimed its independence, on 3 June, Serbia, according to Article 60 of the Constitutional Charter on which the State Union was based, has automatically become legal successor of the previous State. It means that Serbia continues legal personality of that state as well as its status in the international organisations and treaties to which the former state was a party. Accordingly, Serbia has become a state party to the Mine Ban Treaty while Montenegro had to accede to it. By depositing its instrument of accession to the Convention with the Secretary General on 23 October 2006, Montenegro fulfilled this requirement and has become the 152nd State Party to the Mine Ban Treaty.

VI. METHODS AND THE FUTURE OF UNIVERSALIZATION OF THE OTTAWA CONVENTION

We shall now say something about the methods which states parties and relevant organizations and NGOs developed for the universalization of the Convention and the plans for the future activities to this end. As can be seen from this paper, a special role in planning and developing the strategy for the universalization of the Convention is played by the Universalization Contact Group. This group holds its meetings on the margins of formal and informal meetings of states parties where, led by an experienced Canadian team, it evaluates the performance in this respect and further determines priorities. At the latest meeting in Geneva, at the margins of the Seventh Meeting of states parties, states not parties have been categorized, in accordance with the goals set, into five groups, and for each state within a group a review of the results achieved has been published, as well as the actions to be taken in the next period. In addition, the time period in which the actions mentioned should bear fruits has also been determined.

The first group includes states which, given proper incentive, could accede to the Convention or ratify it by the next, the eighth, meeting of states parties to be held in Jordan from 18 to 22 December 2007. These states are: Kuwait, Micronesia, Palau, Poland, United Arab Emirates, and Indonesia. The next

group includes states which could accede to the Convention by the ninth meeting of states parties. They are: Bahrain, Oman and Lebanon. The next group includes states whose relation towards the Convention does not allow for planning an exact date of their accession to the Convention but rather opens a possibility to implement “provisional measures” aimed at their inclusion in the work of formal and informal meetings of states parties, or a hint at possible accession to the Convention. They are: Finland, Iraq, Kyrgyzstan, Libya, Laos, Mongolia, Somalia, and the Pacific islands of Tonga and Tuvalu (note that the Department for Support of the Ottawa Convention, an important mechanism set up by states parties for the most effective possible implementation of the Convention, offered these states - within the framework of a special policy towards small island states - support in respect of the process of ratification of or accession to the Convention). The fourth group includes states which have declared support for the Convention or an interest in it and which are to be persuaded that it is necessary for them to take further steps in this direction. They are: China, Israel, Morocco, Nepal, Sri Lanka and Uzbekistan. Finally, the fifth group includes states which need to be persuaded that their attending meetings of states parties would be meaningful. They are: Georgia, India, Pakistan, Singapore and Vietnam.

It is easy to note that this list does not include all the 44 states which are not parties to the Convention. Particularly striking is the absence of the USA, as well as of Cuba, Iran, Egypt, Syria, both Koreas, and Russia. The fact that a small number of individual states are not on the list means that these are the most difficult cases for the universalization, where it is estimated that no efforts will currently bring any positive results. Particularly worrying in this is the fact that these states include some of the biggest users, manufacturers and stockpilers of anti-personnel mines, some of which have announced research and development of new landmine systems between 2005 and 2011 that are incompatible with the provisions of the Ottawa Convention. However, it should be mentioned that a number of NGOs, led by ICBL, continue their tireless efforts, supported by civil society in a number of aforementioned countries, aimed at introducing a change in stands of political elites towards this important issue.

Most of the measures to be undertaken in connection with encouraging the above-mentioned groups of states with a view to achieving the universalization goals are mainly applicable to all the groups, whereas a few ones are applicable to individual groups. The measures are a result of many years of efforts invested

by the Universalization Contact Group to develop appropriate methods and ways for further spread of the Convention. These measures primarily include: maintaining contacts with possible delegations of targeted states at next informal and formal meetings of states parties, encouragement to submit voluntary reports in accordance with Article 7 of the Convention, stronger pressure of states parties in a particular region on their neighbors, activities of the Implementation Support Unit aimed at facilitating the creation of formal condition related to drawing up and submitting the ratification instrument, sending topical letters and appropriate demarches, sending letters from donor states to highlight the benefits enjoyed by states parties following their accession to the Convention, organization of seminars on the implementation of the Ottawa Convention or treaties in general, as well as of seminars on specific technical questions concerning the Convention, visits of representatives of ICBL, ICRC and other relevant organizations, as well as activities of regional delegations of the ICRC or national Red Cross societies or Red Crescent societies, and permanent monitoring of the developments related to the Convention in any individual state by the civil society with appropriate international support.

Finally, the aforementioned categorization of states makes further direction and speed of the spread of the Convention clearly predictable. Apparently, no spectacular developments are to be expected in the universalization of the Convention any more, but rather a stable addition of several states per year. States parties, relevant organizations and NGOs can only persevere in working together until the total universalization of the Convention, because it is precisely universalization of the Convention that is the sole guarantee that significant developments in disarmament and humanitarian goals achieved to date will survive, and that a world free of anti-personnel mines will finally become reality²⁸.

VII. CONCLUSION

As we have tried to show in this paper, the Ottawa Convention is in many ways an exceptional treaty. However, what really distinguishes it from all the other major treaties, and what gives it a lasting mark, is the cooperation between governments and civil society that is without precedent. Civil society played

²⁸ Final Report, APLC/CONF/2004/5.

an extremely important role not only in the creation of the Convention, but also in the implementation of its fundamental goals and its supervision. The universalization of the Convention, which is surely one of the basic objectives of the Convention, is perhaps the best example of this cooperation. Owing to this cooperation, the Convention currently includes almost all European, American and African states. They also include two members of the UN Security Council and states with substantial military and political capabilities. A direct consequence of the universalization of the Convention, of course, has meant great achievements in all the fundamental areas of the implementation of the Convention. Primarily, the use of anti-personnel mines has been stigmatized throughout the world and very few governments use this weapon (last year anti-personnel mines were only used by Russia, Myanmar and Nepal). In addition, the number of non-state actors using anti-personnel mines is constantly falling. Last year, non-state actors used anti-personnel mines in about ten countries, whereas a significant number of them (29) declared their readiness to waive the use of anti-personnel mines by signing the *Deed of Commitment* of the Geneva Call, issuing unilateral declarations to such an effect, or through bilateral agreements between the parties to conflicts. Of about fifty states which manufactured anti-personnel mines before the entry of the Convention into force, 38 have terminated the manufacture, including five states which are not parties to the Convention. The transfer of anti-personnel mines has been completely stopped, that is, reduced to illicit trade of insignificant volume. This is an effect of a consistent implementation of the provisions of the Convention and of the moratorium on the export of anti-personnel mines declared by most states which are outside the Convention, including the biggest manufacturers of this weapon. Of all the states parties to the Convention, 138 do not have mines stockpiled, either because they destroyed them (74) or because they never possessed them in the first place. To date, states parties have destroyed almost 40 million anti-personnel mines from stockpiles and will destroy 16 million more by 2010, in accordance with their commitments under the Convention. Finally, the systematic removal of anti-personnel mines from the areas under the jurisdiction or control of states parties and states not parties²⁹ is continuing, and is followed by an appropriate input of funds donated for that purpose.

²⁹ For example see the statement by the People's Republic of China at the Seventh Meeting of the States Parties to the Mine Ban Convention on 18 September 2006.

It is also to be noted that almost all states of the world, in one way or another, agreed on the need to achieve the absolute ban on anti-personnel mines, if not instantaneously then eventually. This is supported e.g. by the final declarations of the Second Review Conference of states parties on conventional weapons³⁰, a number of resolutions of the UN General Assembly, a number of resolutions of individual important regional organizations, and a number of unilateral declarations by individual states³¹ in support of the total ban or at least humanitarian framework of the Convention, as well as its purpose and goal. The number of states voting for the resolution of the UN General Assembly concerning the implementation of the Convention in early December last year was the biggest (158) since the introduction of the Convention in 1997, whereas the number of abstaining states was the smallest (17). In addition, 18 states not parties to the Convention voted for the resolution, including China.³²

Bearing in mind all these facts, it is perhaps not presumptuous to claim that in the not so distant future it is possible to expect the humanitarian norm established by the Ottawa Convention to become a rule of international customary law, and thus binding on all the states of the world.

³⁰ CCW/CONF.1/WP.1/Rev.1.

³¹ For example see the statement by Armenia at the Seventh Meeting of the States Parties to the Mine Ban Convention on 18 September 2006.

³² The Resolution of the General Assembly of the UN 60/80 was adopted on 8 December 2005 with 158 votes in favor, 17 abstained, and no vote against.

Sažetak

Toma Galli *

UNIVERZALIZACIJA KONVENCIJE ZA ZABRANU PROTUPJEŠAČKIH MINA: TEMELJI, TRENUTNO STANJE I BUDUĆNOST

Temeljni cilj ovog rada jest utvrditi pravne temelje, opisati trenutno stanje te pokušati odrediti budućnost univerzalizacije Konvencije za zabranu uporabe, stvaranja zaliha, proizvodnje i prijenosa protupješačkih mina i o njihovu uništenju. U tu svrhu, prije svega smo nastojali kratko razjasniti pojam univerzalizacije međunarodnog ugovora općenito te opisati moguće (osnovne) načine njezina provođenja. Pritom smo nastojali razjasniti odnos između međunarodnog ugovornog i međunarodnog običajnog prava, s posebnim osvrtom na mogućnosti univerzalizacije Otavske konvencije, ali jednako tako i raspraviti pojedine konstatacije iz završnih dokumenata sastanaka država stranaka koje, u određenoj mjeri, otvaraju ovo pitanje.

Slijedi kratak podsjetnik na nastanak ideje sveobuhvatne i potpune zabrane protupješačkih mina te njezin razvoj od početaka devedesetih godina prošlog stoljeća do usvajanja Konvencije za zabranu protupješačkih mina. Nakon toga, kroz analizu teksta Konvencije, završnih dokumenata godišnjih sastanaka država stranaka i, posebice, završnog dokumenta Prve pregledne konferencije, nastojali smo odrediti pravnu osnovu i puno značenje pojma univerzalizacije Otavske konvencije. U odjeljku pod nazivom: Vremensko i prostorno širenje Konvencije za zabranu protupješačkih mina, prikazali smo stupanje Konvencije na snagu te njezino munjevito vremensko i prostorno širenje, gotovo bez presedana u povijesti međunarodnih ugovora.

Naposljetku, u završnim poglavljima, namjera nam je bila dati prikaz postojećih metoda na raspolaganju državama strankama, mjerodavnim organizacijama i NGO-ima za daljnju univerzalizaciju tog iznimno zanimljivog i, po mnogo čemu, posebnog međunarodnog ugovora te ukratko, iz poduzetih akcija država stranaka i odgovarajućih reakcija država izvan Konvencije, pokušati predvidjeti daljnji tijek i konačnu sudbinu univerzalizacije Konvencije za zabranu protupješačkih mina.

Ključne riječi: Konvencija za zabranu protupješačkih mina (Otavska konvencija), univerzalizacija, protupješačke mine, međunarodno običajno i ugovorno pravo, Međunarodna kampanja za zabranu protupješačkih mina, nedržavni (vojni) čimbenici

* Toma Galli, dipl. iur., Stalna misija Republike Hrvatske pri Uredu Ujedinjenih naroda, 25, Route de Ferney, 1209 Ženeva

Zusammenfassung

Toma Galli **

**DIE UNIVERSALISIERUNG DES ÜBEREINKOMMENS ÜBER
DAS VERBOT VON ANTIPERSONENMINEN: GRUNDLAGEN,
AKTUELLER STAND UND ZUKUNFT**

Das Hauptziel der vorliegenden Arbeit ist es, die Rechtsgrundlagen der Universalisierung des Übereinkommens über das Verbot des Einsatzes, der Lagerung, der Herstellung und der Weitergabe von Antipersonenminen und über deren Vernichtung festzustellen, ihren aktuellen Stand zu beschreiben und ihre Zukunft einzuschätzen. Zu diesem Zweck wird zunächst versucht, kurz den Begriff der Universalisierung eines völkerrechtlichen Vertrags allgemein zu erklären und die möglichen (grundlegenden) Umsetzungsmodalitäten zu beschreiben. Dabei wird auf das Verhältnis zwischen vertraglichem Völkerrecht und internationalem Gewohnheitsrecht eingegangen, mit besonderer Berücksichtigung der Möglichkeiten der Universalisierung des Ottawa-Übereinkommens. Ebenso werden einzelne Feststellungen aus den Schlussdokumenten der Konferenzen der Unterzeichnerstaaten erörtert, die diese Frage in gewisser Weise aufwerfen.

Es folgt eine kurze Rückschau auf die Entstehung der Idee eines umfassenden und vollständigen Verbots von Landminen sowie ihre Entwicklung vom Anfang der neunziger Jahre des vorigen Jahrhunderts bis zur Verabschiedung des Übereinkommens über das Verbot von Antipersonenminen. Danach wird anhand einer Analyse des Textes des Übereinkommens, der Schlussdokumente der Jahreskonferenzen der Mitgliedstaaten und insbesondere des Schlussdokumentes der Ersten Überprüfungskonferenz der Versuch unternommen, die Rechtsgrundlage und die volle Bedeutung des Begriffs der Universalisierung des Ottawa-Übereinkommens zu bestimmen. Im Abschnitt mit der Bezeichnung "Zeitliche und räumliche Verbreitung des Übereinkommens über das Verbot von Antipersonenminen" wird sein Inkrafttreten und seine rapide zeitliche und räumliche Verbreitung dargestellt, die in der Geschichte der völkerrechtlichen Verträge nahezu einmalig ist.

In den abschließenden Kapiteln werden die Methoden geschildert, die den Mitgliedstaaten, maßgeblichen Organisationen und Nichtregierungsorganisationen zur Verfügung stehen, um dieses äußerst interessante und in vielerlei Hinsicht besondere völkerrechtliche Vertragswerk zu universalisieren. Im Lichte der umgesetzten Aktionen der Mitgliedstaaten

** Toma Galli, Jurist, Ständige Vertretung der Republik Kroatien bei den Vereinten Nationen Büro in Genf, 25, route de Ferney, 1209 Genf

und der entsprechenden Reaktionen der Nichtmitgliedstaaten wird schließlich versucht, den weiteren Verlauf und das endgültige Schicksal der Universalisierung des Übereinkommens über das Verbot von Antipersonenminen vorherzusehen.

Schlüsselwörter: Übereinkommen über das Verbot von Antipersonenminen (Ottawa-Übereinkommen), Universalisierung, Antipersonenminen; internationales Gewohnheitsrecht und Völkerrecht, internationale Kampagne für das Verbot von Landminen, nichtstaatliche (militärische) Faktoren